

REMARKS

Claims 7, 9-10 and 12-49 are pending in this application. By the Office Action, claims 1-6 and 21-49 are withdrawn from consideration; claims 7, 9-10, 12-15, 17 and 19 are rejected under 35 U.S.C. §102, and claims 16, 18, and 20 are rejected under 35 U.S.C. §103.

Applicants thank the Examiner for the indication that the previous rejection under 35 U.S.C. §112 has been withdrawn.

I. **Restriction Requirement**

Claims 1-6 and 21-49 are withdrawn from consideration as subject to a Restriction Requirement. By this Amendment, non-elected claims 1-6 are canceled. The Restriction Requirement is respectfully traversed as to non-elected claims 21-49.

Applicants submit that elected Groups II and non-elected Group III should be examined together. According to MPEP §803, there are two requirements that must be met before a proper Restriction Requirement may be made. These two requirements are: "The inventions must be independent . . . or distinct as claimed; and there must be a serious burden on the Examiner if restriction is not required . . . " (emphasis added). Applicants respectfully submit that the Office Action has failed to establish the second requirement set forth in MPEP §803, that a serious burden exists on the Examiner if restriction is not required between the Groups of claims.

Applicants respectfully submit that a search for the subject matter of Group II would be commensurate with a search for the subject matter of Group III. Accordingly, search and examination of the subject matter of Group II would encompass a search for the subject matter of Group III, and any additional search would not impose a serious burden upon the Examiner.

It is therefore respectfully asserted that the search and examination of the entire application could be made without serious burden. MPEP §803 states that "If the search and examination of an entire application can be made without serious burden, the Examiner must

examine it on the merits, even though it includes claims to distinct or independent inventions." (Emphasis added). Because Applicants have elected Group II, directed to a microencapsulated material, the further search and examination of Group III, directed to a method of forming the microencapsulated material of Group II, would not place a serious burden upon the Examiner.

For at least these reasons, and in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office, it is respectfully requested that the Restriction Requirement between Groups II and III be reconsidered and withdrawn.

Furthermore, where product and process claims are presented in the same application, Applicant may be called upon under 35 U.S.C. §121 to elect claims to either the product or process. MPEP §821.04. However, in the case of an elected product claim, rejoinder will be permitted when a product claim is found allowable and the withdrawn process claim depends from or otherwise includes all the limitations of an allowed product claim. Id.

In the present application, the method claims of Group III include all of the limitations of the product of Group II. In particular, all of the limitations of the independent product claim 7 of Group II are incorporated into the method of Group III.

Since the method claims of Group III include the limitations of the product claims of Group II, the method claims must be rejoined with the product claims once the product claims are allowed. Thus, to streamline prosecution and avoid delay, the Restriction Requirement should be withdrawn as between Groups II and III to permit concurrent examination of all of the pending claims. Applicant respectfully requests reconsideration and withdrawal of the Restriction Requirement.

II. Rejections Under §102 and §103

Claims 7, 9-10, 12-15, 17 and 19 are rejected under 35 U.S.C. §102(b) over Munteanu, and claims 16, 18, and 20 are rejected under 35 U.S.C. §103(a) over Munteanu.

Because the rejections are related, they are addressed together herein. Applicants respectfully traverse these rejections.

Claim 1 is directed to a microencapsulated material, comprising: a core component, wherein said core component is at least one of oxygen sensitive or water sensitive; and a shell component encapsulating said core component, wherein said shell component comprises a polymer material and a structuring agent, wherein said polymer material comprises pendant ionic groups that form an ionic bridge with said structuring agent, wherein said structuring agent decreases oxygen or water permeability through said polymer material. Such a microencapsulated material is not disclosed, taught or suggested in Munteanu.

A. The Office Action's Characterization of Munteanu

Munteanu discloses hydro-alcohol compositions such as colognes, after-shave lotions, after-bath preparations and splash lotions, which yield continuously high fragrance intensity release, evenly and uniformly over an extended period of time and which can be adapted to yield differing aromas from a qualitative and quantitative standpoint in a controllable manner. The hydro-alcohol compositions contain a mixture of (i) a non-confined fragrance composition; (ii) one or more fragrance oils which are physically entrapped in one or more types of solid particles and (iii) a suspending agent such as hydroxypropyl cellulose, silica, xanthan gum, ethyl cellulose or combinations of the previously mentioned four substances; the non-confined fragrance substance, the entrapped fragrance oil and the suspension agent being premixed prior to the subsequent creation of the hydro-alcohol compositions. Munteanu at Abstract.

The Office Action cites Munteanu as disclosing a microencapsulated material, where the core component is at least one of oxygen sensitive or water sensitive (i.e., a fragrance oil); the shell component encapsulates the core component, wherein the shell component comprises a polymer material (i.e., gelatin) and a structuring agent (i.e., clay), wherein the

structuring agent decreases oxygen or water permeability through the polymer material (i.e., preventing oxidation of the fragrance oil). Regarding the limitation that the polymer material comprises pendant ionic groups that form an ionic bridge with the structuring agent, the Office Action argues that this would have been inherent in the disclosure of Munteanu, based on Munteanu's disclosure of the same materials as are described in the present specification for use in the claimed invention.

B. Munteanu Does Not Disclose the Claimed Invention

While Applicants agree that Munteanu discloses components that overlap with components of the claimed invention, Applicants disagree that Munteanu discloses the claimed invention as a whole. In particular, Munteanu combines the components together in a different fashion, and thus does not describe the claimed invention.

Munteanu at least fails to disclose the specific shell materials required by the claimed invention. That is, Munteanu fails to teach that the microcapsule shell should be formed from (1) a polymer material and (2) a structuring agent, where the polymer material comprises pendant ionic groups that form an ionic bridge with the structuring agent. At most, the reference appears to teach that a coating layer or shell is formed from a suspending agent such as hydroxypropyl cellulose, silica, xanthan gum, ethyl cellulose or combinations thereof, covering a core formed of a non-confined fragrance composition; and one or more fragrance oils which are physically entrapped in one or more types of solid particles. Nowhere does Munteanu teach that the shell components should specifically be a polymer material and a structuring agent, nor does Munteanu teach that these two materials ionically interact with each other, to provide ionic bridges between the components.

In response, the Office Action asserts that because Munteanu uses the same materials as described in the present specification for use in the claimed invention, then the materials of Munteanu must function in the same manner and thus form the same claimed ionic bridges.

Applicants disagree. Although Munteanu may disclose the same materials, Munteanu uses those materials in a different manner, and it would be clear to one of ordinary skill in the art that those materials would not form the claimed ionic bridges.

Munteanu uses clays, etc. as suspending or thickening agents in colognes in order to keep encapsulated articles (such as encapsulated fragrance oil) suspended in the liquid cologne. In order to maintain this encapsulation, the materials of Munteanu do not require, and in fact do not use, any ionic bridges such as those formed in the claimed invention. In the materials of Munteanu, the clays are used as thickening agents, and can be used as thickening agents in all types of products. The clays are not used as part of the encapsulation process in Munteanu, because they are introduced after encapsulation has been accomplished. See, for example, Examples B-J in Munteanu. Likewise, the suspending agents in Munteanu are not introduced until the capsules are suspended in the cologne. See Examples I-XI in Munteanu.

Furthermore, the processing described in Munteanu demonstrates that ionic bridges are not formed. Although Munteanu may use clays and gelatins, the gelatin polymer shell in Munteanu does not form the claimed ionic bridges. This is apparent from the fact that the gelatin capsules used in the Examples of Munteanu have been crosslinked using formaldehyde (see, for example, Example D), rendering reactive sites where ionic bridging could occur nonreactive. If reactive sites in the polymer shell are crosslinked, then no sites remain for forming the claimed ionic bridges.

In contrast to Munteanu, the claimed invention requires that ionic bridging is part of the encapsulation process. The ionic bridges of the claimed invention have nothing to do with suspension of the capsules in other media. The structuring agents are integral parts of the capsule wall and impart the desired properties as part of the capsule wall. The structuring agents are the part of the encapsulation process that enhance the desired properties of the capsule wall.

Accordingly, because Munteanu teaches crosslinking of the polymer shell, Munteanu cannot and does not teach forming ionic bridges, as claimed. Munteanu thus does not anticipate the claimed invention.

C. Munteanu Does Not Teach or Suggest the Claimed Invention

Furthermore, Munteanu does not teach or suggest modifying the disclosed materials, to practice the claimed invention. As described above, Munteanu describes that gelatin capsules used in the Examples of Munteanu have been crosslinked using formaldehyde, which renders reactive sites where ionic bridging could occur nonreactive. Nowhere does Munteanu teach or suggest that the described crosslinking should be omitted, to allow ionic bridges to form. Nor does Munteanu teach or suggest that omitting the crosslinking would even lead to ionic bridge formation, or that such ionic bridge formation could provide any beneficial results.

Munteanu does not teach that the thus-formed ionic bridges provide the required decrease in oxygen or water permeability, which is provided by the claimed invention. See, for example, paragraphs [0018], [0033] and [0051] of the specification. Munteanu does not teach that the shell components, and the resultant ionic bridges, decrease oxygen or water permeability through the shell to protect the core component.

Accordingly, because Munteanu teaches crosslinking of the polymer shell, and fails to teach or suggest omitting such crosslinking, Munteanu cannot and does not teach or suggest forming ionic bridges, as claimed. Munteanu thus would not have rendered obvious the claimed invention.

D. Conclusion

For at least these reasons, claims 7, 9-10, 12-15, 17 and 19 are not anticipated by, and none of claims 7, 9-10, and 12-20 would have been obvious over, Munteanu. Reconsideration and withdrawal of the rejections are respectfully requested.

III. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



James A. Oliff
Registration No. 27,075

Joel S. Armstrong
Registration No. 36,430

JAO:JSA

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OLIFF & BERRIDGE, PLC
P.O. Box 19928
Alexandria, Virginia 22320
Telephone: (703) 836-6400

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